IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.124 OF 2007
IN
SUMMARY SUIT NO.481 OF 2007

M/s. Veeraa Spinning Mills Pvt. Ltd. ..Plaintiff.
Vs.
M/s. Shreeji Textiles & Anr. ..Defendants.

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Mr. Ajay Fernandes i/b Kiran Jain for the Plaintiff.
Mr. Pankaj Das for the Defendants.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

23rd April, 2007.

P.C. :

1. The claim in the suit is based on goods sold, supplied and delivered by the Plaintiff to the Defendants under two invoices dated 17th August, 2006 and 31st August, 2006 in the total amount of Rs.2,46,900/-. In response to the notice of demand dated 4th December, 2006 the Defendants accepted that the goods were supplied and delivered, but claimed that there were defects in the goods supplied whereupon at a joint meeting the Plaintiff had agreed

to reduce the price of the goods supplied to Rs.1,40,000/- against which the payment was to be made by the Defendants after six months. The Plaintiff in its advocate's letter dated 23rd December, 2006 denied that there was any such understanding and claimed that the Defendants had only been requested for time to pay in view of their financial difficulties.

2. In the affidavit in reply it has been again averred that a settlement had taken place between the parties upon the Defendants drawing the Plaintiff's attention to the defects in the goods supplied, under which the Plaintiff had agreed to reduce the price from Rs.2,40,000/- to Rs.1,40,000/-. There is merit in the submission urged on behalf of the Plaintiff that on the contents of the affidavit in reply as they stand, the Plaintiff would be entitled for a decree on admission in the amount of Rs.1,40,000/-. There is also merit in the submission that the defence to the effect that there were defects in the goods and that there was a subsequent settlement is entirely vague and lacking in particulars. In the event that the goods suffered

from any defect, there was no reason for the Defendants to use and appropriate the goods. Significantly there is not a single letter by the Defendants offering to return the goods or pointing out the defects prior to the receipt of the notice of demand. The date on which the alleged settlement took place is again not mentioned. There is no written document evidencing an alleged settlement. The Plaintiff would be entitled to a decree on admission in the amount of Rs.1.40 lacs having regard to the statement contained in paragraph 6 of the affidavit in reply read with the Defendants' letter dated 13th December, 2006, paragraph 3 of which expressly admits a liability to the extent of Rs.1.40 lacs. The Defendants should, in my view, be granted leave to defend the suit in respect of the balance of the claim. Hence, the following order :

i) There shall be a decree on admission in the amount of Rs.1.40 lacs;

ii) Leave to defend the Suit is granted to the Defendants in

respect of the rest of the claim subject to the deposit of an amount of Rs.1,15,000/- within a period of six weeks from today. On deposit of the aforesaid amount, the Plaintiff would be at liberty to withdraw the same subject to furnishing security to the satisfaction of the Prothonotary & Senior Master and filing an undertaking to bring back the amount in the Court, if so directed at such rate of interest as may be awarded by the Court;

iii) Written statement to be filed within a period of eight weeks of the date of the deposit.

The Summons for Judgment is accordingly disposed of.